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RIGHTS OF THE CHILD

Report of the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts on its sixth session

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CONTENTS

		Paragraphs	Page
Introduction		1 - 2	3
I.	ORGANIZATION OF THE SESSION	3 - 20	3
	A. Opening and duration of the session	3	3
	B. Election of the Chairperson-Rapporteur	4	3
	C. Participation	5 - 12	3
	D. Documentation and organization of work	13 - 19	4
	E. Other matters	20	6
II.	GENERAL DISCUSSION	21 - 32	6
III.	CONSIDERATION OF PARTICULAR ISSUES AND DRAFTING PROPOSALS	33 - 88	9
	A. Non-State actors	35 - 40	10
	B. Compliance	41 - 45	11
	C. National implementation	46 - 51	12
	D. International cooperation and assistance	52 - 53	13
	E. Enforced or compulsory recruitment	54 - 56	14
	F. Participation in hostilities	57 - 59	14
	G. Voluntary recruitment	60 - 63	15
	H. Military schools	64 - 66	15
	I. Preamble	67 - 75	16
	J. Reservations	76 - 79	17
	K. Signature and ratification	80 - 83	17
	L. Review conference	84 - 86	18
	M. Amendments	87 - 88	18
IV.	ADOPTION OF THE DRAFT OPTIONAL PROTOCOL	89 - 90	19
V.	PARTICULAR VIEWS EXPRESSED BY SOME DELEGATIONS	91 - 160	19

Annex

Draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts 30

Introduction

1. The Commission on Human Rights, in paragraph 17 (b) of its resolution 1999/80, requested the working group on a draft optional protocol to the Convention on the Rights of the Child, on involvement of children in armed conflicts to meet early in 2000 in order to make further progress with the aim of finalizing its work before the tenth anniversary of the entry into force of the Convention on the Rights of the Child, and to report to the Commission at its fifty-sixth session.

2. The Economic and Social Council, in its decision 1999/249, approved the Commission's request.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The sixth session of the working group was opened by a representative of the Office of the High Commissioner for Human Rights, who made a statement. During the session the working group held 21 plenary meetings from 10 to 21 January and on 23 March 2000. The working group adopted its report on 23 March 2000.

B. Election of the Chairperson-Rapporteur

4. At its 1st meeting, on 10 January 2000, the working group elected Ms. Catherine von Heidenstam (Sweden) Chairperson-Rapporteur.

C. Participation

5. The representatives of the following States members of the Commission attended the meetings of the working group, which were open to all members of the Commission: Argentina, Bangladesh, Brazil, Canada, Chile, China, Colombia, Cuba, Czech Republic, Ecuador, El Salvador, France, Germany, Guatemala, India, Indonesia, Italy, Japan, Latvia, Luxembourg, Mexico, Morocco, Nepal, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Spain, Sri Lanka, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

6. The following States, non-members of the Commission, were represented by observers: Algeria, Angola, Australia, Austria, Belarus, Belgium, Brunei Darussalam, Bulgaria, Costa Rica, Croatia, Democratic Republic of Korea, Democratic Republic of the Congo, Denmark, Dominican Republic, Egypt, Ethiopia, Estonia, Finland, Georgia, Greece, Hungary, Iceland, Iran (Islamic Republic of), Iraq, Ireland, Jordan, Kuwait, Libyan Arab Jamahiriya, Lithuania, Malaysia, Mozambique, Netherlands, New Zealand, Panama, Saudi Arabia, Singapore, Slovakia, Slovenia, South Africa, Sweden, Syrian Arab Republic, Thailand, Turkey, Uruguay, Zimbabwe.

7. The following States non-members of the United Nations were also represented by observers: Holy See, Switzerland.

8. The following United Nations bodies were represented by observers: Committee on the Rights of the Child, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, United Nations Children's Fund (UNICEF) and the Office of the United Nations High Commissioner for Refugees (UNHCR).

9. The following specialized agency was represented by an observer: International Labour Organization.

10. The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies were also represented by observers.

11. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers: Amnesty International, Associated Country Women of the World, Coalition against Trafficking in Women, Commission of the Churches on International Affairs of the World Council of Churches, Defence for Children International, Friends World Committee for Consultation (Quakers), Human Rights Watch, International Council of Women, International Federation Terre des Hommes, International Save the Children Alliance, International Service for Human Rights, Lutheran World Federation, New Humanity, Nuclear Age Peace Foundation, Pax Christi International, International Catholic Peace Movement, World Christian Life Community, World Vision International.

12. The following other non-governmental organizations were represented: Coalition to Stop the Use of Child Soldiers, Dutch Coalition against the Use of Child Soldiers, Focal Point Programme on Sexual Exploitation of Children.

D. Documentation and organization of work

13. The working group had before it the following documents:

E/CN.4/2000/WG.13/1	Provisional agenda
E/CN.4/2000/WG.13/2 and Add.1-2	Report of the Secretary-General prepared pursuant to paragraph 17 of Commission on Human Rights resolution 1999/80: comments on the report of the working group
E/CN.4/2000/WG.13/3	Report of the Chairperson of the working group, prepared pursuant to Commission resolution 1999/80
E/CN.4/1998/102 and Add.1	Report of the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts on its fourth session
E/CN.4/1999/73	Report of the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts on its fifth session
A/54/430	Report of the Special Representative of the Secretary-General for Children and Armed Conflict

14. The working group adopted its agenda, as contained in document E/CN.4/2000/WG.13/1, at its 1st meeting, on 10 January 2000.

15. At the 1st meeting, on the proposal of the Chairperson-Rapporteur, the working group decided, in order to speed up the drafting process, to continue its work in a combination of formal and informal meetings. It was also decided to appoint coordinators for the nine main issues, as follows:

A. Non-State actors

Coordinator: Mr. Minelik Alemu, Ethiopia

B. Compliance

Coordinator: Mr. Ibrahim Salama, Egypt

C. National implementation

Coordinator: Mr. Antonio Carlos Nascimento Pedro, Brazil

D. International cooperation and assistance

Coordinator: Ms. Renuka Naiker, South Africa

E. Enforced recruitment

Coordinator: Ms. Carla Rodriguez-Mancia, Guatemala

F. Participation in hostilities

Coordinator: Mr. Petter Wille, Norway

G. Voluntary recruitment

Coordinator: Ms. Elif Comoglu-Ulgen, Turkey

H. Military schools

Coordinators: Ms. Aline Kuster-Menager and Mr. Hervé M'agro, France

I. Preamble

Coordinator: Mr. Eric van Der Wal, Australia

16. Such informal meetings, headed by the coordinators, were held from 10 to 19 January 2000.

17. The Chairperson-Rapporteur drew the attention of the working group to the outcome of the informal open-ended consultations held in December 1999 during which it was agreed that the working group would work on the basis of the "Chairperson's perception" paper annexed to the report of the working group on its fourth session (E/CN.4/1998/102, annex II). She also referred to the text of the draft optional protocol proposed by the United States of America (E/CN.4/2000/WG.13/2/Add.1), as well as to several other drafting proposals submitted by some Governments and non-governmental organizations which were circulated in photocopied form.

18. She further recalled that her recommendations to the working group (E/CN.4/2000/WG.13/3) provided for the setting of a minimum age of 18 years for participation in hostilities and for all forms of recruitment, with an opt-out provision regarding voluntary recruitment allowing for a minimum age of 17 years with reference to national legislation.

19. The Chairperson-Rapporteur stressed the importance of the working group fulfilling its task of achieving agreement on the draft optional protocol in time to mark the tenth anniversary of the entry into force of the Convention on the Rights of the Child and in time for the preparations for the special session of the General Assembly on children's rights in the year 2001.

E. Other matters

20. At the 14th meeting, on 18 January 2000, the representative of Cuba expressed regrets at the practice of holding several parallel meetings of informal groups simultaneously. Being thus unable to participate in some of them, he reserved the right of his delegation to come back to any of the issues discussed, to question any decision adopted and to submit any new proposals that it might wish to make.

II. GENERAL DISCUSSION

21. At the 1st meeting, on 10 January 2000, the representative of Guatemala made a statement on behalf of the Latin American and Caribbean Group. She highlighted that raising the minimum age was a goal for the Latin American and Caribbean countries and that several normative efforts had been undertaken in order to prevent the direct and indirect participation of children in hostilities. She also recalled that the Latin American and Caribbean Group were in favour of the adoption of the draft optional protocol, which would prevent, prohibit and sanction the participation of children under 18 in armed conflicts. She added that in the opinion of the Latin American and Caribbean Group the Protocol should deal appropriately with the demobilization, recovery and social resettlement of children involved in armed conflicts and should include international cooperation aimed at mobilizing and contributing financial and technical resources to that effect. She emphasized the need, as a priority objective of States and the international community, to address the causes present in the origin of armed conflicts that give rise to the involvement of children in such conflicts, their prevention and resolution, as well as the consolidation of a culture of peace.

22. At the same meeting, the observer for the International Labour Office (ILO) drew the attention of the working group to ILO Convention No. 182 (1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted unanimously

in Geneva on 17 June 1999. For the purposes of that Convention, the term "the worst forms of child labour" included forced or compulsory recruitment of children for use in armed conflict (art. 3 (a)). The Convention was to come into force 12 months after the date on which the ratifications of two members had been registered with the Director-General of ILO. Six instruments of ratification had already been registered (those of Botswana, Ireland, Malawi, Seychelles, Slovakia and the United States of America).

23. At the 9th meeting, on 14 January 2000, the United Nations High Commissioner for Human Rights, Ms. Mary Robinson, addressed the working group. The High Commissioner expressed her belief that the question at issue was not the difference between 16, 17 and 18 years of age, the fundamental point was the distinction between children and adults. Her own view on the issue was that no child under 18 should either be recruited into armed forces, voluntarily or otherwise, or participate in armed hostilities. The following specific points were raised by the High Commissioner:

(i) For States for which the "straight 18" position was not possible, it should be borne in mind that the protocol was "optional" in nature, and such States should be encouraged not to block a consensus being reached by the vast majority of States who now supported the "straight 18" position;

(ii) National legislation should not be presented as an obstacle to new and more advanced international standards;

(iii) It was recognized that certain States would face difficulties if they were to accept the "straight 18" position, including those created by the need to achieve an acceptable definition of a "military school", and that of seeking compliance with the optional protocol by non-State actors, but it was hoped that consensus could be achieved over those very sensitive issues;

(iv) All had to work to implement existing and new legal standards and to demobilize, rehabilitate and reintegrate children who had taken part in armed conflicts.

24. The High Commissioner noted further that the Secretary-General, in his report to the Security Council on the protection of civilians in armed conflict, had highlighted the extent of the problem and suggested a number of measures which could be taken to increase the attention given to the plight of children. She referred to the following recommendations made by the Secretary-General:

(i) Measures to eliminate the use of children as soldiers should be aimed at rebel movements, as well as States, and both should be subject to targeted sanctions if they continued to use children;

(ii) Arms embargoes should be imposed on parties to armed conflict which recruited child soldiers;

(iii) Every encouragement should be given to all States to ratify the Rome Statute of the International Criminal Court;

(iv) Peace agreements and the mandates of peacekeeping operations should include specific measures focusing on the disarmament, demobilization and reintegration of child soldiers.

25. At the 11th meeting, on 17 January 2000, Mr. Olara A. Otunnu, Special Representative of the Secretary-General for Children and Armed Conflict, addressed the working group. He strongly supported a minimum age of 18 years for both recruitment and participation in hostilities, in the light of the practical implications it would have for children. He pointed out that in many countries children were recruited from among the rural poor, who often lacked birth registration or other documentation reflecting their ages. While it was difficult to discern whether a particular child soldier was 13, 14 or 15 years of age, one would be able to state with greater certainty that a particular child was not 18.

26. The Special Representative of the Secretary-General stated that a "straight 18" optional protocol that applied equally to armed forces and armed groups would enable its advocates to negotiate commitments from non-State actors to refrain from recruiting or using children under 18 in their ranks. Such groups often insisted on complying with existing international law that refers only to the recruitment of those children under age 15.

27. The Special Representative considered that the adoption of a strong optional protocol at the current session was an indispensable step that would enable his office and other United Nations agencies to pursue additional initiatives, including: monitoring compliance with the protocol and bringing political pressure to bear on armed forces or groups that violated the new standard, addressing the various social, economic and political factors that facilitated the exploitation of children as soldiers, and improving programmes for child soldiers.

28. He reiterated the need to readjust the perspective with regard to child soldiers and begin to address their particular needs within the context of all war-affected children. He said that a failure by the working group would only benefit those currently abusing children as soldiers and the brunt of the failure would be borne by children.

29. At the 16th meeting, on 18 January 2000, Mr. Jaap E. Doek, a member of the Committee on the Rights of the Child, addressed the working group. He stated that the Committee called for an instrument which would make it possible for States parties to the Convention who wished to do so, by ratifying the optional protocol, to raise the minimum age for mandatory recruitment or voluntary enlistment of children into armed forces, and for direct or indirect involvement of children in hostilities, to 18 years.

30. The representative of the Committee reiterated that, as the function of optional protocols was to promote the progressive development of international law by enabling States to adopt higher standards, the Committee reaffirmed its hope that States which were not in a position to accept a minimum age of 18 years would not prevent the adoption of the optional protocol by others.

31. The representative highlighted that the Committee was pleased that the working group was apparently in agreement that the Committee should have a role in monitoring the implementation of the optional protocol and in ensuring compliance. He confirmed that the

Committee was very much willing to undertake that role and expected that the proposed expansion of its size to 18 members would make it possible to cope better with its existing monitoring responsibilities and to take on the additional ones required by a future optional protocol. He made the following points with regard to monitoring of the optional protocol by the Committee:

(a) The Committee supported the proposal that States parties to the optional protocol should submit an initial report separately and that subsequent reporting on the implementation of the optional protocol should be a part of each State's regular reporting on implementation of the Convention;

(b) The Committee assured States parties that its monitoring activities would be executed in compliance with the rules of the Convention on the Rights of the Child. The Committee noted, further, that it would wish to be able to request additional information from States parties at any time, as was currently the case for consideration of the Convention, as provided for in article 44.4 of the Convention;

(c) Based on its experience, the Committee was confident that States parties, even those in difficult circumstances, would be able to cope with the reporting obligations that might be required under a future optional protocol;

(d) The Committee wished to emphasize the need for a clear and firm optional protocol and to reiterate that the standards set by the Convention on the Rights of the Child were increasingly becoming the basis upon which new regional, national and local authorities developed their own new legislative and administrative standards. Bearing that in mind, the Committee urged the working group to ensure that the Convention, and any future optional protocol, retained the highest of standards in the protection of children's rights.

32. The attention of the working group was drawn to a joint statement entitled "UN bodies call for a prohibition on the recruitment and participation of children under age 18 in armed conflict" by the Committee on the Rights of the Child, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, the United Nations Children's Fund (UNICEF), the United Nations High Commissioner for Human Rights and the United Nations High Commissioner for Refugees which was released to the press on 12 January 2000.

III. CONSIDERATION OF PARTICULAR ISSUES AND DRAFTING PROPOSALS

33. At the 1st to 15th meetings, from 10 to 19 January 2000, the working group, at the invitation of the Chairperson-Rapporteur, held a general discussion on several questions relating to the draft optional protocol. The topics discussed included the questions of non-State actors, compliance, national implementation, international cooperation and assistance, enforced or compulsory recruitment, participation in hostilities, voluntary recruitment, military schools and the preamble, as well as the questions of reservations, signature and ratification.

34. At the 17th to 19th meetings, from 19 to 21 January 2000, the working group considered the compilation of various texts submitted by the coordinators of the informal drafting groups

which had been put together by the Chairperson-Rapporteur to serve as a basis for the draft text of the future optional protocol. This compilation also included several articles contained in the 1998 "Chairperson's perception" paper (E/CN.4/1998/102, annex II), as well as new texts proposed by the Chairperson-Rapporteur.

A. Non-State actors

35. At the 2nd meeting, on 10 January 2000, the working group began its consideration of the issue of non-State actors, on the basis of article 3 of the "Chairperson's perception" paper (E/CN.4/1998/102, annex II). The working group also had before it article 5 of the text proposed by the United States of America (E/CN.4/2000/WG.13/2/Add.1) and the joint proposal of Canada and Norway which read as follows:

> "1. To the extent compatible with national legal systems and relevant international human rights standards, State Parties shall take all possible measures to prevent recruitment and use of persons under the age of 18 years by armed groups distinct from the armed forces of a State.
>
> 2. The application of the present provision under the Protocol shall not affect the legal status of any party to an armed conflict."

36. It was generally felt that all three proposals were constructive and could serve as a good basis for future work. Several delegations expressed their preference for the text contained in the "Chairperson's perception" paper, though it was admitted that it could be strengthened by merging the different proposals.

37. While some speakers argued that non-State parties could not be bound by an inter-State treaty and that it was therefore a matter to be dealt with through domestic law, another view was that the optional protocol should address non-State actors directly and provide for criminalization of their actions in cases where they were in violation of the protocol.

38. According to another opinion, the issue of non-State actors should only be addressed in the preambular part of the protocol. Several participants emphasized the importance of retaining in the text the provisions of paragraph 2 of article 3 of the "Chairperson's perception" paper concerning the legal status of parties to an armed conflict. It was also felt that the optional protocol should apply to all situations, not only those of armed conflict. At the same time, it was stated that nothing in the protocol should be in conflict with international humanitarian law.

39. Following consideration of the issue in the informal drafting group, the working group, at the 6th meeting, on 12 January 2000, approved ad referendum the text of an article on non-State actors.

40. Consideration of this issue was continued during the discussion of the compilation of texts submitted by the Chairperson-Rapporteur (see para. 34 above). For the final text, see the annex, article 4.

B. Compliance

41. At the 3rd meeting, on 11 January 2000, the working group began its consideration of the issue of compliance with the provisions of the protocol, on the basis of article 7 of the 1998 "Chairperson's perception" paper (E/CN.4/1998/102, annex II). The working group also had before it article 8 of the text proposed by the United States of America (E/CN.4/2000/WG.13/2/Add.1) and the joint proposal of Canada and Norway, which read as follows:

> "1. If the Committee receives reliable information which appears to it to contain well-founded indications that recruitment or use of children in hostilities, contrary to the provisions of the present Protocol, is being practised in the territory of a State Party, the Committee may request the observations of the State Party with regard to the information concerned.
>
> 2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may:
>
> (a) Seek further clarification, information or comments from any source, including where applicable the source(s) of the original information;
>
> (b) Hold hearings in order to clarify the situation.
>
> 3. The Committee may initiate a confidential inquiry, which may include a visit of its members (2-3) to the territory of the State Party concerned. Such a visit would take place after consultation with the State Party concerned regarding the modalities of the visit.
>
> 4. After examining the findings of its inquiry, made in accordance with paragraphs 2 and 3 of this article, the Committee shall transmit these findings to the State Party concerned together with any comments or recommendations which seem appropriate in view of the situation.
>
> 5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 3, the Committee may decide to include a summary account of the results of the proceedings in its annual report."

42. Many participants expressed their preference for the text contained in article 7 of the "Chairperson's perception" paper, which they found to be clear, comprehensive and brief. Some other delegations, however, considered that article 7 was not sufficient and should be strengthened and broadened by provisions taken from other proposals.

43. The idea of annual reporting to the Committee on the Rights of the Child was not shared by several delegations, which argued that this would immensely increase the workload of the Committee. It was also felt that decisions on the contents of reports and on other details should remain the competence of the Committee.

44. While some speakers disagreed with the joint proposal of Canada and Norway and recalled that in previous years there had been no agreement on the idea of extending the functions of the Committee on the Rights of the Child, other participants supported this proposal as a further step towards strengthening the protection of children. Several delegations supported the idea of including in the optional protocol a separate provision on cooperation in implementing the protocol, including through international assistance for the rehabilitation and social reintegration of child soldiers. In this regard, it was proposed to provide in the optional protocol for the establishment of a voluntary fund for that purpose.

45. Following the consideration of various proposals in the informal drafting group, a text on the issue of compliance was produced and was approved by the working group. For the text, see the annex, article 8.

C. National implementation

46. At the 4th meeting, on 11 January 2000, the working group began consideration of the issue of national implementation and enforcement of provisions of the protocol, on the basis of article 6 of the "Chairperson's perception" paper (E/CN.4/1998/102, annex II). The working group also had before it a joint proposal of Canada and Norway, which read as follows:

> "1. State Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of practices prohibited in the present protocol, including programmes related to their physical and psychological recovery, and their social reintegration.
>
> 2. State Parties undertake to make the principles and provisions of the present Protocol widely known, by appropriate and active means, to the public at large, especially children, and government institutions, including the armed forces. States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education programmes.
>
> 3. In implementing the provisions of this Protocol, particular attention shall be given to protect children who are especially vulnerable to recruitment."

Another part of the joint proposal by Canada and Norway read as follows:

> "1. Each State Party shall take all necessary legal, administrative and other measures, including the imposition of penal or other sanctions, to ensure the effective implementation and enforcement of the provisions of this Protocol, and to prevent and suppress in territory under its jurisdiction any activity prohibited under this Protocol.

2. In particular, each State Party shall adopt such measures as may be necessary to establish as offences under its national law the recruitment or use in hostilities of persons under the age of 18 by armed groups distinct from the armed forces of the State Party, and to make these offences punishable by appropriate penalties which take into account the grave nature of the offences."

47. Most of the speakers found the text of article 6 of the "Chairperson's perception" paper acceptable, but considered that it could be strengthened and broadened by incorporating some of the elements contained in the proposals submitted by Canada and Norway. Some doubts were, however, expressed with regard to the inclusion of the concepts of "victims" and children who are "especially vulnerable to recruitment".

48. Concerning the enforcement measures, the view was expressed that criminalization should affect all parties, i.e. both non-State actors and State agents. According to another view, a State could not be assumed to violate its own laws. Therefore, administrative rather than criminal measures should be applied to State agents violating the protocol. The importance of avoiding impunity of State agents was stressed in this connection.

49. According to another opinion, the obligations of States to ensure the enforcement of the optional protocol were so obvious that there was no need to refer to them in the text.

50. It was also felt that questions relating to assistance to victims of practices prohibited in the protocol should be dealt with in a separate article.

51. Following the consideration of the issue of national implementation and enforcement in the informal drafting group, the text of an article was produced which was approved by the working group. For the text, see the annex, article 6.

D. International cooperation and assistance

52. The discussion of issues relating to international cooperation and assistance was pursued in the drafting group and during informal meetings of the working group. It was based on article 6 of the text proposed by the United States of America (E/CN.4/2000/WG.13/2/Add.1) and a joint proposal by Canada and Norway, which read as follows:

"1. States Parties shall promote cooperation between their authorities, international and regional organizations, and relevant national and international non-governmental organizations with a view to the implementation of the present Protocol, including prevention of any activity prohibited under this Protocol.

"2. Each State Party in a position to do so shall provide assistance for the purpose set out in Article ... [national implementation]. Such assistance may be provided, inter alia, through the United Nations system, international, inter-governmental, regional or national organizations or institutions, non-governmental organizations, or on a bilateral basis."

53. Following the consideration of various proposals in the informal drafting group, the text of the article on international cooperation and assistance was produced and was approved by the working group. For the text, see the annex, article 7.

E. Enforced or compulsory recruitment

54. At the 6th meeting, on 12 January 2000, the working group approved ad referendum the text on enforced or compulsory recruitment, as contained in almost identical article 2.1 of the "Chairperson's perception" paper (E/CN.4/1998/102, annex II) and article 1.2 of the text proposed by the United States of America (E/CN.4/2000/WG.13/2/Add.1).

55. The consideration of this issue was continued during the discussion of the compilation of texts submitted by the Chairperson-Rapporteur (see para. 34 above). At the 19th meeting, on 21 January 2000, the representative of Cuba proposed a new text for article 2, reading as follows:

> "States Parties shall ensure that persons who have not attained the age of 17 are not compulsorily recruited into their armed forces, and undertake that such persons are fully informed of the duties involved in such military service, that full proof of age is provided prior to acceptance into the armed forces of the State and that they will not take part in hostilities."

56. For the final text, as adopted by the working group, see the annex, article 2.

F. Participation in hostilities

57. At the 7th meeting, on 13 January 2000, the working group began its consideration of the issue of age limits for participation in hostilities on the basis of article 1 of the 1998 "Chairperson's perception" paper (E/CN.4/1998/102, annex II). The working group had also before it article 1 of the text proposed by the United States of America (E/CN.4/2000/WG.13/2/Add.1) and a joint proposal by Canada and Norway, which read as follows:

> "States Parties shall ensure that members of their armed forces who have not attained the age of 18 years do not participate in hostilities."

Subsequently, this proposal was amended by the delegation of Sweden to read as follows:

> "States Parties shall ensure that persons who have not attained the age of 18 years do not participate in hostilities as members of their armed forces."

58. Several delegations stated that they would clearly prefer the "straight 18" age limit for participation in hostilities. Others spoke in favour of article 1 of the "Chairperson's perception" paper, which provides that States Parties should take "all feasible measures" to ensure that persons under 18 years do not take "a direct part" in hostilities. Some other participants referred to their national legislation and practice, allowing the recruitment of persons under the age of 18,

and appealed to other delegations to demonstrate more flexibility in order that they could accommodate their national interests and concerns and to ensure that a compromise could be achieved on that issue.

59. Following the consideration of various proposals in the informal drafting groups, the text of an article on the age-limit for participation in hostilities has been produced and approved by the working group. For the text, see the annex, article 1.

G. Voluntary recruitment

60. At the 8th meeting, on 13 January 2000, the working group began its consideration of the issue of voluntary recruitment, on the basis of article 2.2 of the 1998 "Chairperson's perception" paper (E/CN.4/1998/102, annex II). The working group had also before it articles 1 to 4 of the text proposed by the United States of America (E/CN.4/2000/WG.13/2/Add.1), a proposal submitted by Australia, which read as follows: "As a minimum, States parties shall only recruit persons into their armed forces who are in their seventeenth year", as well as a proposal submitted by Belgium, which read as follows:

> "States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily or voluntarily recruited into their armed forces.

61. There was a division between delegations which supported the "straight 18" formula and those which favoured other options, such as the 17-year or even lower minimum age; the opt-in/opt-out clause; or a proposal not to include any reference to the age for voluntary recruitment in the optional protocol at all.

62. There was support for establishing the standard at 18 years as a rule and as the best way to avoid the eventual participation of children in hostilities and to protect them from being considered legitimate military objects of attacks. It was also proposed that consideration be given to an opt-out clause as a way of having a rule or to allow flexibility regarding voluntary recruitment prescribing, on the basis of article 38 (3) of the Convention on the Rights of the Child, a rise of the minimum age in years and with all the guarantees.

63. Following the consideration of various proposals in the informal drafting group, the text of an article on voluntary recruitment was produced and was approved by the working group. For the text, see the annex, article 3.

H. Military schools

64. At the 9th meeting, on 14 January 2000, the working group began its consideration of the issue of military schools, on the basis of article 2.3 of the "Chairperson's perception" paper (E/CN.4/1998/102, annex II).

65. While some speakers supported the text contained in article 2.3 of the "Chairperson's perception" paper, which provides that the age limitation does not apply to education and vocational training in military schools, several other delegations considered that this article could only be accepted if language was added to the effect that pupils in such schools were not

members of armed forces, because if those schools where merely educational and did not imply recruitment into the armed forces, there was no need to have any reference to them in the protocol and even less in the article on voluntary recruitment. Portugal proposed to add the following wording to the paragraph concerning military schools: "Paragraph 2 does not apply to education and vocational training in schools, including those operated by or under the control of the armed forces of States parties in keeping with articles 28 and 29 of the Convention on the Rights of the Child, as long as the pupils are not members of the armed forces." It was then agreed among participants that there was no need for a separate paragraph on this subject at all, since the issue of military schools was closely linked to, or even a part of, the issue of voluntary recruitment, and that it would be preferable to look at the article on the latter subject in its entirety.

66. Following the consideration of various proposals in the informal drafting groups, the text of a paragraph on military schools was produced and was approved by the working group. For the text, see the annex, article 3.5.

I. Preamble

67. At the 12th meeting, on 17 January 2000, the working group began its consideration of the preambular part of the draft optional protocol. The discussion was based on the text of the preamble as contained in the "Chairperson's perception" paper (E/CN.4/1998/102, annex II). The working group had also before it the text proposed by the United States of America (E/CN.4/2000/WG.13/2/Add.1).

68. The observer for Iraq proposed a new text for inclusion in the preambular part or as a new article of the draft optional protocols. The text read as follows:

> "Nothing in this Protocol shall be interpreted in a manner inconsistent with the right to self-defence according to the United Nations Charter, the provisions of international law as well as the relevant provisions of international humanitarian law."

69. The observer for Egypt proposed the inclusion in the preamble of a new paragraph reading as follows:

> "Mindful of the need to address the political and economic causes of the involvement of children in armed conflicts."

70. The observer for Belgium proposed the following text for inclusion in the preambular part:

> "Encouraging the participation of the community and, in particular, children and child victims in the dissemination of information and education programmes concerning the implementation of the protocol."

71. The representative of Colombia proposed to amend the third preambular paragraph in the text submitted by the United States of America by replacing the word "dissident" by "non-State".

72. The observer for Switzerland proposed to update the sixth preambular paragraph by referring to a more recent international conference of the Red Cross and Red Crescent.

73. In the discussion that followed, several delegations expressed their support or preference for the text of the preambular part as contained in the "Chairperson's perception" paper. It was also felt that this text could be strengthened by some elements taken from the proposal of the United States of America.

74. With regard to the proposal of Iraq, some delegations supported it, while several others disagreed with the idea of referring to self-defence in a separate paragraph and considered that reference to the Charter of the United Nations already contained in the preambular part would suffice.

75. Following the consideration of various proposals in the informal drafting group, the text of the preamble was produced and was approved by the working group. For the text, see the annex.

J. Reservations

76. At its 14th meeting, on 18 January 2000, the working group began its consideration of the issue of reservations to the optional protocol. The Chairperson referred to the text of article 5 as contained in the "Chairperson's perception" paper (E/CN.4/1998/102, annex II) and proposed to replace it with the following wording:

"No reservation to the present Protocol shall be permitted."

77. A number of delegations opposed this proposal, which they considered to be contrary to the Vienna Convention on the Law of Treaties.

78. The consideration of this issue was continued during the discussion of the compilation of texts submitted by the Chairperson-Rapporteur (see para. 34 above). While several delegations expressed their preference for the text proposed by the Chairperson, other participants favoured the text of article 5 as contained in the "Chairperson's perception" paper (E/CN.4/1998/102, annex II). Another proposal was to delete this article altogether.

79. At the 19th meeting, on 21 January 2000, the Chairperson proposed to delete the article on reservations from the text of the draft optional protocol altogether. This proposal was accepted by the working group.

K. Signature and ratification

80. At its 14th meeting, on 18 January 2000, the working group began its consideration of the question of signature and ratification of the optional protocol, on the basis of the text contained in article 8 of the "Chairperson's perception" paper (E/CN.4/1998/102, annex II).

81. The representative of the United States of America referred to article 9 of the text proposed by his delegation (E/CN.4/2000/WG.13/2/Add.1), which provides that the optional

protocol shall be subject to ratification or open for accession "by any State", i.e. not necessarily a party to the Convention on the Rights of the Child, and suggested that that text should replace paragraphs 1 and 2 of article 8 of the "Chairperson's perception" text. In the view of his delegation, there was no legal impediment to such a proposal.

82. The Chairperson subsequently informed the working group that in a legal opinion on this issue received from the United Nations Legal Counsel it was confirmed that it would not be inconsistent with the mandate of the working group to prepare an instrument which would be open for accession by all States.

83. The consideration of this issue was continued during the discussion of the compilation of texts submitted by the Chairperson-Rapporteur (see para. 34 above). For the final text, see the annex, article 9.

L. Review Conference

84. At the 17th meeting, on 20 January 2000, during the consideration of the compilation of texts submitted by the Chairperson-Rapporteur (see para. 34 above), the Chairperson proposed to include in the draft optional protocol the following new article:

> "A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Protocol to discuss its operation and status, in particular the need for further Review Conferences."

85. In the discussion which followed, support was expressed by many delegations for this proposal. A number of delegations, however, were of the view that there was insufficient time to discuss that proposal thoroughly. Other participants expressed doubts as to the inclusion of such a clause in a human rights instrument.

86. At the 19th meeting, on 21 January 2000, the Chairperson withdrew this proposal.

M. Amendments

87. At the 17th meeting, on 20 January 2000, during the consideration of the compilation of texts submitted by the Chairperson-Rapporteur (see para. 34 above), the Chairperson proposed to include in the draft optional protocol the following new article:

> "1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments which they have accepted."

88. No delegations objected to this proposal, which was accepted by the working group. For the text, see the annex, article 12.

IV. ADOPTION OF THE DRAFT OPTIONAL PROTOCOL

89. At the 20th meeting, on 21 January 2000, the draft optional protocol was adopted by consensus and acclamation by the working group. For the text, see the annex.

90. A great majority of delegations welcomed the fact that the working group had achieved agreement on the text of the draft optional protocol. However, many expressed some disappointment that stronger provisions had not been possible even though most recognized that the text reflected the common position of the working group and would allow very broad adherence to the optional protocol. Statements made by various delegations at this meeting following the adoption of the draft optional protocol, as well as the statements submitted subsequently in writing to the secretariat, are reflected in chapter V below.

V. PARTICULAR VIEWS EXPRESSED BY SOME DELEGATIONS

91. The representative of Cuba stated that Cuba had made everything possible, in a constructive and flexible spirit, to ensure that the negotiations continued with a view to achieving results at that session. It was recalled that Cuba shared the concerns regarding the participation of children in armed conflicts and did not oppose the approval of the draft text in order to reach consensus, but that it had serious reservations with respect to article 2. The new Cuban law passed a few years previously to increase the age limits of recruitment, modifying the previous law, established that male citizens should perform active military service for two years between the ages of 17 and 28, as part of the strategic defensive concept of the country. In the light of the precedent elements, Cuba would adopt the corresponding decisions in due time in relation to ratification of or accession to the protocol.

92. The representative of France stated that his delegation was not satisfied with the solution proposed in the text of article 9.2 and that it was with great reluctance that his delegation, in a spirit of compromise, would accept that article and join the consensus on the optional protocol. He emphasized strongly that allowing the ratification of the optional protocol without adhering to the mother Convention on the Rights of the Child should not set a precedent for the future, bearing in mind the very specific context of present negotiations.

93. The observer for Denmark recalled that her delegation had firmly defended the standard of "straight 18" and regretted that the working group had failed to take decisive action on the main issue, which, according to the mandate of the working group and the Vienna Declaration,

was to set a clear standard on the minimum age of recruitment into armed forces - bringing the age limit in line with the almost universally accepted 18 years' standard of the Convention on the Rights of the Child.

94. Denmark strongly hoped, with regard to the implementation of the optional protocol, that the Committee on the Rights of the Child would be very active in enforcing the safeguards concerning children under 18 and against sending them into war. Furthermore, Denmark found it surprising that the possibility of making reservations had not been excluded due to the limited scope of the optional protocol and hoped that that would not set a deplorable precedent for other texts under preparation in the United Nations.

95. The observer for Sweden stated that considering the negotiations and the protocol as a whole, Sweden was pleased with the outcome. Sweden would have liked to see a stronger protocol with a standard of 18. The present text contained weaknesses. But, irrespective of that, the working group had been able to adopt the draft protocol by consensus. The observer for Sweden highlighted that, under the protocol, the use of children in armed conflict would be prohibited, which was a major achievement.

96. Sweden regarded the decision to allow for a State not party to the mother Convention to become a party to the optional protocol to that Convention to be an exception, which should not be regarded as a precedent for any other international instrument. Also, Sweden expected such a State to abide by the basic principles of the mother Convention, the Convention on the Rights of the Child.

97. Sweden would like to see a prohibition of any reservations to the protocol. The absence of a provision prohibiting reservations under the protocol should not be interpreted as setting a precedent. Sweden further considered that that entailed that general rules and principles of public international law, i.e. the Vienna Convention on the Law of Treaties of 1969, were applicable to the protocol.

98. The delegation of Colombia pointed out that the international community was making a historical commitment to combat the growing problem of the participation of children in armed conflict, to ensure that they were completely uninvolved in the theatre of war and to contribute to the rehabilitation and social reintegration of victims.

99. The condemnation of persons who engaged more persistently than ever in the practices of recruiting, training and involving children in hostilities and the provision which established an express prohibition along those lines strengthened the obligations provided for in international humanitarian law, as well as the provision of the Statute of the International Criminal Court characterizing the enlistment of children as a war crime.

100. Like the provisions which made it a binding obligation for States not to involve any member of their armed forces under the age of 18 in hostilities and not to enlist anyone who had not reached that age, the delegation of Colombia considered that the rule on international cooperation providing for bilateral and multilateral assistance and the establishment of a voluntary fund for the physical and psychological rehabilitation and social reintegration of victims was of particular importance.

101. The observer for the United Nations Children's Fund (UNICEF) expressed support for an optional protocol that established a clear international ban on the recruitment into armed forces and on the participation in hostilities of children below the age of 18. UNICEF remained convinced that it was essential to prevent both compulsory and voluntary recruitment into armed forces and both direct and indirect participation in hostilities for all persons below the age of 18. Such measures should apply to governmental and non-governmental entities, and to international and internal conflicts.

102. The observer for UNICEF recognized that the draft optional protocol constituted a significant compromise between divergent positions. In a positive manner, it encouraged the application of the norms most conducive to the realization of children's rights and called for the effective implementation and enforcement of the provisions of the Protocol, including through the promotion of their wide dissemination. Significantly, it banned the compulsory recruitment of persons into armed forces and armed groups, below the age of 18. UNICEF regretted that the working group was not able to agree on an equally clear age limit for the voluntary enlistment of children in national armed forces and had not inserted a clear ban on their participation in hostilities. UNICEF therefore hoped that, guided by the principle of the best interests of the child, States would use the binding declaration they were expected to deposit in that regard, as an opportunity to commit themselves to the highest possible level of protection of children's rights, thus consolidating the process so many of them had already started at the national level, and which had enjoyed widespread international support. Moreover, by setting a dichotomy of solutions in relation to national armed forces and armed groups, the text might raise doubts as to its compatibility with the principles of the universality of human rights and non-discrimination.

103. UNICEF believed that the adoption of the optional protocol should be used as an opportunity to further strengthen safeguards of children's rights and to ensure their special protection during conflict situations. Once the protocol had been approved by the General Assembly, UNICEF would actively support the process of ratification and the quick entry into force of the new legal instrument. UNICEF would encourage States to formally express their commitment to ensuring the highest possible level of protection to war-affected children and would support their efforts in the broader context of the Convention. Moveover, UNICEF would continue to support the Committee on the Rights of the Child in its monitoring role.

104. The observer for the International Committee of the Red Cross (ICRC) said that ICRC welcomed the agreement that had been reached on the text of the draft optional protocol and expressed its gratitude to participating States and organizations, including in particular the Coalition to Stop the Use of Child Soldiers, for their work to prevent the involvement of children in armed conflict. According to the International Committee of the Red Cross, that objective was in line with the Plan of Action endorsed in 1995 by the Council of Delegates of the International Red Cross and Red Crescent Movement, which inter alia, aimed to "promote the principle of non-recruitment and non-participation in armed conflict of children under the age of 18 years".

105. The observer for ICRC highlighted that the optional protocol undeniably represented a clear improvement of the standards contained in existing international law. That was true in particular with respect to the age limit for participation in hostilities and for compulsory recruitment.

106. In the opinion of ICRC, the agreed text also contained numerous weaknesses and the obligation imposed on States to prevent participation in hostilities should have been made more absolute and should also have covered indirect participation, which might often be equally dangerous for the children involved. The protection provided against forced recruitment was also considerably weakened by the provision which permitted voluntary recruitment below the age of 18 years.

107. The observer for ICRC said that it might be difficult in the field to determine whether child soldiers had been voluntarily recruited or not and, while the safeguards were a positive aspect, it must be noted that there was limited possibility in many war-affected States to provide reliable proof of age (for instance, birth registration systems might hardly exist). Finally, the exception made for military schools provided a possibility for circumventing the age limits set on recruitment. He further noted that it was to be hoped that the Committee on the Rights of the Child would compensate for weaknesses of the text by a strict interpretation, including by emphasizing that all the relevant provisions of the Convention apply simultaneously.

108. The observer for ICRC welcomed the willingness of States to regulate the behaviour of non-State actors and thus also to address situations of non-international armed conflicts, but noted that the relevant provision suffered from several important weaknesses. Firstly, it imposed a moral, as opposed to legal, obligation under international law. Secondly, a criminal repression under domestic law was likely to be of limited effect, because those who took up arms against the lawful Government of a country already exposed themselves to the most severe penalties of the law, and because the capacity of a Government to enforce its domestic law was often very limited in situations of non-international armed conflicts. Thirdly, it was uncertain whether non-State actors would feel bound by a norm which was different from that imposed on States, and thus whether it would be respected.

109. In conclusion, the observer for ICRC called on States to ratify the optional protocol as soon as that becomes possible and to effectively implement the obligations contained therein. He also reaffirmed the willingness of the Movement to continue its work for the non-recruitment and non-participation of children in hostilities, including by identifying children at risk of becoming soldiers, providing them with alternative sources of income and respect, and by raising awareness in society not to allow children to join armed forces or groups.

110. The observer for the Coalition to Stop the Use of Child Soldiers welcomed the draft optional protocol in so far as it established 18 years as the minimum age for participation in hostilities, prohibited the compulsory recruitment by Governments of persons below 18 years and banned recruitment or use in hostilities of persons below 18 years by non-governmental armed groups.

111. The Coalition regretted that it was not possible to reach agreement on a minimum age of 18 years for volunteer recruits into government armed forces. The only way to ensure that

persons under 18 years did not participate in war was not to recruit them in the first place. By prohibiting all recruitment by non-governmental armed groups, while at the same time allowing Governments to recruit child volunteers, the protocol created a double standard of behaviour. Consequently, the Coalition would continue to campaign for a minimum voluntary recruitment age of 18 years. It would also play its part in campaigning for universal ratification and in monitoring compliance with the protocol's provisions.

112. The representative of Japan considered that the concepts of some terms in article 4, such as "armed groups", were unclear, especially when that article obliged States parties to criminalize certain acts relating to those terms. However, it joined consensus on the understanding that it was left to each State party to define those terms in their domestic context on reasonable grounds, as well as to decide which "feasible measures", including criminalization, were most suitable to take.

113. Concerning article 6, paragraph 1, the delegation of Japan joined the consensus on the understanding that the purpose of the paragraph was to ensure the effective implementation and enforcement of the provisions of the Protocol, and it was left to the reasonable discretion of each State party to decide and take those measures which it considered most effective for that purpose.

114. Japan recognized the importance of paragraph 1 of article 8 in order to ensure the effective implementation of the protocol. At the same time, taking into account the current workload of the Committee on the Rights of the Child, the delegation of Japan considered it necessary that those reports be treated in a manner such that they did not place a greater burden both on the Committee and on each State party.

115. The delegation of Italy stated that it was very clearly in favour of the minimum age of 18 as an absolute limit for participation in armed conflict. It considered that the unsatisfactory solution to the problems dealt with in articles 1 and 3 of the revised text did not meet the requirement of setting a minimum age limit for forced or voluntary recruitment. In practice, the current wording of article 3 allowed States to recruit children as of the age of 15.

116. The delegation of Italy requested that the words "shall take all feasible measures" should be replaced by the words "shall take all necessary measures". It also requested that an authentic interpretation should be established in order to clarify the meaning of the words "do not take a direct part in hostilities". It was in favour of retaining the article on reservations, as proposed by the Chairperson.

117. The delegation of Switzerland stated that Switzerland was actively involved in the question of banning the use of child soldiers, both in legislative and in economic, social and political terms. Switzerland was convinced not only that a solution to the problem of child soldiers was essential for children themselves, but also that it represented an important contribution to the international peace and security of present and future generations.

118. Switzerland had set two objectives, namely, an age limit of 18 years for recruitment and participation in hostilities and the adoption of provisions relating to the prevention of recruitment and participation in hostilities before that age, as well as to the rehabilitation and social reintegration of children who were victims of armed conflict.

119. In the Swiss delegation's opinion, the protocol adopted contained obvious weaknesses, particularly with regard to the regime for voluntary recruitment and, to some extent, participation in hostilities, in connection with which Switzerland would like a more binding provision. The striking thing about the text, however, was that it undeniably made the age of 18 a standard to which only a few exceptions were allowed. The text also clearly conveyed the message that the international community was determined specifically to guarantee the protection of children who were involved in, and the victims of, armed conflict.

120. The Swiss delegation was of the opinion that the protocol adopted should be widely ratified, including by States which were not parties to the Convention on the Rights of the Child. In the case of such States, it was important that the protocol should be interpreted and implemented in the light of and on the basis of respect for the principles and relevant provisions of the Convention.

121. The Belgian delegation had participated constructively in the work of the group in order to arrive at a protocol guaranteeing a genuine improvement in the situation of children involved in armed conflict. To that end, it had made many suggestions, several of which had received broad support. It noted with regret that some States were not yet prepared at present to become involved specifically and seriously in the establishment of clear-cut and binding international rules prohibiting the use of persons under the age of 18 years in hostilities.

122. In the Belgian delegation's opinion, article 1 of the protocol met that very legitimate concern in a quite unsatisfactory way. Belgium expressed the hope that States which had been opposed to any stricter rule would take it upon themselves to guarantee the concrete implementation of the provisions adopted. The Committee on the Rights of the Child would have a key role to play in that regard.

123. Belgium regarded the decision of the working group to allow for a State not party to the mother Convention to become a party to an optional protocol to that Convention to be an exception, which should not be regarded as a precedent for any other international instrument. Also, Belgium expected such a State party to abide by the basic principles of the mother Convention, the Convention on the Rights of the Child.

124. Belgium continued to be convinced that the best protection against the horrors of combat that States could guarantee their children was to prevent their compulsory or voluntary recruitment before the age of 18 into the armed forces or among other actors involved in armed conflict. In that connection, it found that there were some harmful inconsistencies between several articles. Although the protocol did not meet Belgium's expectations, especially in respect of participation, it did have the advantage of referring several times to the age of 18 as the objective to be achieved in that regard and of requiring States to raise the age of voluntary recruitment above the minimum set by the Convention on the Rights of the Child and the Protocols Additional to the Geneva Conventions.

125. Belgium welcomed the existence of a protocol and expressed the hope that, despite its weaknesses, it would be a solid and useful instrument serving to remind those who used children on the battlefield of the obligations which they had assumed.

126. The observer from Slovenia agreed with the general opinion that the optional protocol was not the optimum reflection of the previous six years of negotiations, but he was convinced that the present text was a very important contribution to more effective protection of the rights of the child.

127. The observer for Uruguay stated that, while the Government of Uruguay had historically supported the position known as "straight-18", it accepted the compromise text put forward by the Chairperson, observing with satisfaction the important progress that it represented.

128. The Government of Uruguay renewed its commitment, undertaken several years previously on signing the Convention on the Rights of the Child, when it declared that, in exercise of its sovereignty, in no circumstance, would it allow persons below the age of 18 years to participate directly in armed conflicts or to be recruited. It did not consider it acceptable to allow the participation of persons below the age of 18 years by way of so-called voluntary recruitment.

129. The Government of Uruguay did not see any inconvenience in the protocol being ratified by a State non-party to the Convention on the Rights of the Child, in as much as such ratification implied the acceptance of the obligations linked to the Convention, in the same terms as States parties to the Convention.

130. The representative of the United States of America said that the United States delegation was pleased to join the consensus on a historic protocol which represented a huge step forward in the common effort to deal effectively with the problem of child soldiers. The core issue for the United States of America had always been the forcible recruitment of very young children in local armed conflicts around the world, where they might be maimed, killed, exposed to drugs and alcohol, sexually abused or brutalized in many ways. By addressing the practices of non-State actors, the agreement struck at the heart of the problem of child soldiers.

131. The United States delegation believed that the agreement dealt in a realistic - and therefore effective way - with the issue of minimum ages for conscription, voluntary recruitment and participation in hostilities. As for participation in hostilities, the terms in article 1, with their roots in international humanitarian law and the law of armed conflict, were clear, well understood and contextually relevant. The United States of America would take all steps it feasibly could to ensure that under-18-year-old service personnel did not take a direct part in hostilities. While the standard recognized that, in exceptional cases, it might not be feasible for a commander to withhold or remove such a person from taking a direct part in hostilities, the United States believed that it was an effective, sensible and practical standard that would promote the object that all sought: protecting children and ensuring that the protocol had the widest possible adherence and support.

132. In the view of the delegation of the United States, the provisions in the protocol promoting international cooperation and international assistance in the areas of rehabilitation and

social reintegration of children who had been victimized by acts contrary to the protocol were particularly useful. The United States had contributed more than $20 million per year in recent years to programmes for children affected by war. It would continue to put a high priority on such programmes.

133. The delegation of the United States was also extremely pleased with the strong provisions for reporting, compliance and follow-up. It understood that any State that ratified the protocol was bound to accept also the relevant principles of the articles of the Convention on the Rights of the Child that were cited in the protocol.

134. The delegation of the United States of America stressed that the protocol, to be effective and meaningful, must be both widely ratifiable and widely implementable. It looked forward to working with all international partners in the years ahead to achieve the common objective: eliminating the abuses committed against children in armed conflict.

135. The observer for Ethiopia stated that the Ethiopian delegation had consistently supported a strong optional protocol that would raise the minimum age for the recruitment and participation of children in hostilities to 18 years without any qualification as to direct or indirect participation. However, it had become apparent that such a strong protocol was not realistically achievable for consensus adoption.

136. While the Ethiopian delegation accepted the draft text proposed by the Chairperson as a basis for compromise that helped the working group to finalize its work, it would like to record its disappointment that the draft text was so watered down that it would unfortunately lend itself to different interpretations and use. In particular, draft article 3 introduced an open provision that could mean quite different age limits for recruitment, depending on the practice of the State party concerned.

137. Because of the weak nature of the draft text, the Ethiopian delegation was strongly in favour of a no reservation provision in the draft optional protocol. It was impossible to envisage a draft provision of the protocol against which a reservation could be made that would not run contrary to the object and purpose of the instrument.

138. With regard to non-State parties to the Convention on the Rights of the Child, the Ethiopian delegation was not opposed to the proposed opening of the instrument for ratification by any State in as much as the principles and the articles of the Convention on the Rights of the Child mentioned in the draft text equally applied to such a State.

139. Finally, the Ethiopian delegation was confident that despite its short-comings, the draft optional protocol would help intensify concerted action by the United Nations system and the non-governmental community to save thousands of children from being used as child soldiers.

140. The observer for Finland stated that the compromise reached was clearly below what his delegation expected. However, a significant step had been taken in order to prohibit internationally the involvement of children in armed conflicts. The new human rights instrument confirmed an important distinction between children and adults.

141. The delegation of the Russian Federation stated that the adoption of the existing draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflict posed no difficulties for the Russian Federation. All the provisions of the draft protocol were consonant with Russian legislation, including on the issue of non-participation by minors attending military schools (Suvorov and Nakhimov colleges, cadet corps) in hostilities.

142. However, the text of the protocol agreed ad referendum had one major shortcoming. Article 3, which required Governments to raise the minimum age for voluntary recruitment for military service, did not set a specific age limit for such an increase.

143. In addition, the fact that the prohibition on direct participation by persons who had not attained the age of 18 years in hostilities was not formulated strictly in the document (States were not required to prohibit, but only called on to take "all feasible measures" to prevent such participation), together with the provisions of article 3 meant that the protocol left States the possibility in any emergency of involving persons under 18 years of age in hostilities.

144. If there was a review of individual provisions of the draft at the fifty-sixth session of the Commission on Human Rights, the Russian Federation reserved the right to revert to the compromise proposal for the protocol to prohibit the voluntary recruitment into armed forces of persons who had not attained the age of 17 years.

145. The representative of India stated that though the text of the optional protocol was, indeed, a compromise text, it was also a delicately balanced one. Importantly, it did raise standards in a real and substantive manner over the existing norms in its various provisions including those on international cooperation, safeguards in national legislation, combating the menace of the use of children in armed conflict by non-State actors and not least in the standards with regard to the age of recruitment and participation.

146. The delegation of Pakistan, in its preliminary comments, stated that the text was a compromise text and like any compromise text, it did not meet the aspirations of all. The protocol would, however, help in strengthening and improving international standards on the rights of the child. It added that a "delicate balance" of varying country positions has been achieved in the proposed text and expressed the hope that it would be adopted. Also, it stated that Pakistan would make an interpretative statement at the time of the adoption of the protocol by the Commission on Human Rights.

147. In the opinion of the delegation of Portugal, the new protocol achieved a number of crucial objectives: in the first place, it set a new age-limit in relation to the participation of children in hostilities, which constituted clear progress in relation to the formerly existing standard of 15 years. This represented a reaffirmation of the exiting principle that all persons below the age of 18 years were entitled to special protection and care and for that reason they should not participate in hostilities. Secondly, the protocol reaffirms the age of 18 years as the frontier between childhood and adulthood, as it set the minimum age for the compulsory recruitment of persons. Finally, the protocol stated clearly the necessity of raising also the age for voluntary recruitment, a recognition of the fact that existing standards were not sufficient to protect children adequately. It reaffirmed the principle, contained in article 38 of the Convention on the Rights of the Child, that States parties shall give priority to those who are oldest, when

recruiting persons under the age of 18 years. It restated the fundamental principle that persons under the age of 18 years are entitled to special protection. This provision also made a positive contribution to ensuring compliance, as it established the obligation of States parties permitting the voluntary recruitment below the age of 18 years to adopt special safeguards.

148. However, in spite of these results the delegation of Portugal was compelled to reiterate that it was willing to go much further. In regard to article 1, the indirect participation of chidren in armed conflict was not prohibited by the protocol and the discretionary powers granted to States weakened the absolute character of the protection to be afforded to children. Concerning the question of voluntary recruitment (art. 3), the delegation was convinced that recruitment (whether voluntary or compulsory) should only be possible for persons aged 18 or more. It was well known that it was frequently difficult to make a distinction between voluntary and compulsory recruitment in practice. In that regard, the Government of Portugal had changed its position in relation to this subject and adopted the new Law on the Military Service (Law 174/99, of 21 September 1999) which increased the minimum age for voluntary recruitment to 18.

149. The delegation of Portugal expected that a State not party to the Convention on the Rights of the Child which ratified the protocol would abide by the principles of the Convention. Finally, the delegation strongly hoped that the protocol would be an important tool for protecting children from the effects of war and for keeping children off the battlefield.

150. The observer for Singapore stated that the Singapore delegation had consistently maintained that for the optional protocol to be meaningful, it should receive universal acceptance. The draft optional protocol represented a finely balanced outcome that offered the best possible compromise solution for all. It was a major step forward to improve the present situation of the protection of the rights of the child.

151. The observer for Australia welcomed the consensus on the protocol, which he termed historic. The negotiations had been difficult, reflecting the disparate views held by many countries. However, he considered that the final text reflected the best possible compromise: one which allowed for effective international action to deal with the widespread abuse of children as soldiers.

152. The delegation of the Czech Republic stated that its aim had been to have the strongest possible protocol for the protection of children in armed conflicts. Nevertheless, it was aware how important it was to adopt the optional protocol as soon as possible. Therefore, the delegation had joined the consensus.

153. Despite the shortcomings, the Czech delegation saw the merits of the text of the optional protocol, which indeed improved the existing standards of international legal protection in this field. It believed that the optional protocol would be widely ratified and properly implemented in good will, especially in order to protect children under 18 years from being used on the battlefield.

154. As far as the issue of reservations was concerned, the Czech delegation supported the present wording of article 11, since the protocol was optional and its text already represented a compromise.

155. The observer for Turkey stated that Turkey would have preferred a "straight 18" protocol. However, given the importance of a protocol being universally accepted, Turkey was satisfied with the outcome and looked forward to its early adoption.

156. The delegation of New Zealand stated that the compromise text did not meet every need of every delegation, including those of New Zealand, and that there were a number of areas where New Zealand would have liked to have seen stronger language. New Zealand had also supported an article that would not permit reservations. Nevertheless, New Zealand recognized that the text represented a compromise that significantly raised the standards of protection for children in situations of armed conflict and should enable broad ratification and adherance.

157. The observer for the Islamic Republic of Iran stressed the necessity of having in the preambular part a reference to the right to self-defence as contained in Article 51 of the Charter of the United Nations, so that nothing in the protocol would prevent people from defending themselves against possible aggression.

158. The delegation of Norway stated that, as a country promoting the "straight 18" standard, Norway was satisfied that the age limit for participation in hostilities was set at 18. This represented major progress compared to the present standard set out in the Convention on the Rights of the Child. It encouraged all States to comply with the principle of the provision and to ensure that children within their armed forces did not take part in hostilities. In order to comply with the provision, States must develop safeguards. In this regard, it was important to communicate the content of the provision to the children themselves and to their officers.

159. Norway regretted that there was no consensus on raising the age limit to 18 years for voluntary recruitment into national armed forces.

160. The delegation of Norway emphasized that adopting the optional protocol by no means marked the end of efforts to address the situation of war-affected children. It hoped for rapid universal ratification of the protocol and for immediate action to demobilize the several hundred thousand child soldiers engaged in armed conflicts around the world. Their physical and psychological recovery, as well as their social reintegration, were the primary goals.

Annex

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals,

Noting the adoption of the Statute of the International Criminal Court and, in particular, the inclusion in the Statute of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities as a war crime in both international and non-international armed conflicts,

Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child, there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention, raising the age of possible recruitment of persons into armed forces and their participation in hostilities, will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth international Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children under the age of 18 years do not take part in hostilities,

Welcoming also the unanimous adoption, in June 1999, of ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that this Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to this Protocol owing to their economic or social status or gender,

Mindful also of the necessity to take into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in implementation of this protocol, as well as physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of information and education programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1

State Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

State Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1. States Parties shall raise the minimum age in years for the voluntary recruitment of persons into their national armed forces from that set out in article 38.3 of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol which sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties which permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:

Such recruitment is genuinely voluntary;

Such recruitment is done with the informed consent of the person's parents or legal guardians;

Such persons are fully informed of the duties involved in such military service; and

Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups, distinct from the armed forces of a State, should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law which are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.

2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery, and their social reintegration.

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation among concerned States parties and relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, inter alia, through a voluntary fund established in accordance with the General Assembly rules.

Article 8

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child in accordance with article 44 of the Convention any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 9

1. The present Protocol is open for signature by any State which is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification or open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General of the United Nations, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States which have signed the Convention of each instrument of declaration pursuant to article 3, ratification or accession to the Protocol.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States which have signed the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act which occurs prior to the date at which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments which they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States which have signed the Convention.